IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.Rev.Pet.No. 3487 of 2005()

CRA.76/2004 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
CC.757/2002 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED:

P. ABDUL NAZAR, S/O. HASSAN,
PANIKKARANTHOTTU HOUSE, P.O. KAKKUR, KOZHIKODE.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE:

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1. ARAVINDAKSHAN NAIR,
S/O. C.K. RAGHAVAN NAIR, KRISHNA NIVAS,
P.O. POONOOR CHERUPALAM, VIA. NARIKKUNI,
KOZHIKODE.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN
SMT.A.K.PREETHA
PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 3487 OF 2005 A

Dated this the 20th day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.757/2002 on the file of the J.F.C.M.-II, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused

failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to what should be the proper sentence to be imposed on the revision petitioner. The learned counsel for the revision petitioner prayed for six months' time to discharge his entire liability under the cheque in question. The learned counsel appearing for the 1st respondent complainant was not agreeable for granting such a longer duration. He, however, admitted that if the petitioner is given three months' time to discharge his liability under the cheque in question, appropriate modification of the sentence may be made. Accordingly, if the revision petitioner deposits before the trial court a sum of Rs.75,000/- (less amount, if any, already deposited during the pendency of this revision) within three

months from today, he need only to undergo imprisonment till the raising of the court. If the revision petitioner does not deposit the said amount within the above time frame, the sentence imposed on him by the court below shall revive. It goes without saying that the complainant will be entitled to withdraw the amounts as and when it is deposited.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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True Copy

P.A. to Judge